

Bureau of Indian Affairs, Interior

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§ 213.48 Effective date.

The regulations in this part shall become effective and in full force from and after the date of approval (Apr. 27, 1938), and shall be subject to change or alteration at any time by the Secretary of the Interior: *Provided*, That no regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties to the lease. All former regulations governing the leasing of individually owned lands of the Five Civilized Tribes for mining purposes are superseded by the regulations in this part.

§ 213.49 Scope of regulations.

The regulations in this part shall apply in so far as practicable to land purchased for Indians under the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 501-509), as well as to other lands of individual Indians of the Five Civilized Tribes.

PART 214—LEASING OF OSAGE RESERVATION LANDS, OKLAHOMA, FOR MINING, EXCEPT OIL AND GAS

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AUTHORITY: Sec. 3, 34 Stat. 543.

SOURCE: 22 FR 10605, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 214.1 Definition.

The term "officer in charge" shall refer to the superintendent of the Osage Indian Agency and school or other representative of the Government who may, for the time, be in charge of the Osage Agency and school, or any person who may be detailed by the Secretary of the Interior or the Commissioner of Indian Affairs to take charge of leasing or mining operations under the regulations in this part.

§ 214.2 Sale of leases.

Leases of minerals other than oil and gas may be negotiated with the tribal council after permission to do so has been obtained from the officer in charge. Leases with all papers required, shall be filed with the officer in charge within 30 days from the date of execution by the lessee and the principal chief of the Osage Tribe. The lease will be forwarded to the Commissioner of Indian Affairs for consideration by him and the Secretary of the Interior and will become effective only after approval by the Secretary of the Interior. If any lease should be disapproved through no fault of the lessee, all amounts deposited by him will be promptly refunded.

§ 214.3 Corporate information.

A corporation shall file with its first lease a certified copy of articles of incorporation, and, if a foreign corporation, evidence showing compliance with local corporation laws in duplicate; a list of all stockholders, with their post office addresses, and showing the number of shares of capital stock held by each; together with a sworn statement of its proper officer showing:

(a) The total number of shares of the capital stock actually issued, the number of shares actually sold and the amount of cash paid into the treasury

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out of the stock sold, or, if paid in property, kind, quantity, and value of the same.

(b) Of the stock sold, how much per share remains unpaid and subject to assessment.

(c) How much cash the company has in its treasury and elsewhere, and from what source it was received.

(d) What property, exclusive of cash, is owned by the company, and its value.

(e) What the total indebtedness of the company is, and the nature of its obligations.

(f) Names of officers and directors.

§214.4 Bonds.

Lessee shall furnish with each lease at the time it is filed with the officer in charge an acceptable bond not less than the following amounts:

For less than 80 acres	\$1,000
For 80 acres and less than 120 acres	1,500
For 120 acres and not more than 160 acres	2,000
For each additional 40 acres, or part thereof above 160 acres	500

Provided, That for leases for minerals other than oil and gas the Secretary of the Interior or his authorized representatives with the consent of the Indian landowner may authorize a bond for a lesser amount if, in his opinion, the circumstances warrant and the interests of the Indian landowners are fully protected: *Provided further*, That the lessee shall be allowed to file bond, Form S¹ covering all leases to which he or they are or may become parties instead of a separate bond in each case, such bond to be in the penal sum of \$15,000. The right is reserved to change the amount of the bond in any particular case, or to require a new bond in the discretion of the Secretary of the Interior.

[26 FR 164, Jan. 10, 1961. Redesignated at 47 FR 13327, Mar. 30, 1982]

§214.5 Additional information.

The officer in charge may, at any time, either before or after approval of a lease call for any additional information necessary to carry out the purpose

¹For further information concerning forms, see §214.24.

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and intent of the regulations in this part, and such information shall be furnished within the time specified in the request therefor.

§214.6 Failure of lessee to complete lease.

Should a lessee fail to furnish, within the time specified after his bid is accepted, the papers necessary to put his lease and bond in proper form for consideration, the officer in charge shall recommend that the sale be disapproved and money paid forfeited to the Osage Tribe.

§214.7 Operation not permitted until lease approved; 160 acres maximum for single lease.

No mining or work of any nature will be permitted upon any tract of land until a lease covering such tract shall have been approved by the Secretary of the Interior and delivered to the lessee. All leases shall be made for such period as the title to the minerals remain in the Osage Tribe, which time will expire April 8, 1931, unless otherwise provided by Congress and shall be subject to cancellation or termination as specified in this part. Leases made by corporations shall be accompanied by an affidavit by the secretary or president of the company showing the authority of its officers to execute leases, bonds, and other papers. No lease shall be made covering more than 160 acres.

§214.8 Acreage limitation.

No person, firm, or corporation shall hold under lease at any one time without special permission from the Secretary of the Interior in excess of the following areas:

(a) For deposits of the nature of lodes, or veins containing ores of gold, silver, copper, or other useful metals, 640 acres.

(b) For beds of placer gold, gypsum, asphaltum, phosphate, iron ores, and other useful minerals, other than coal, lead, and zinc, 960 acres.

(c) For coal, 4,800 acres.

(d) For lead and zinc, 1,280 acres.

§214.9 Advance rental.

(a) Lessees shall pay, in addition to other considerations, annual advance rentals as follows: 15 cents per acre for

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the first year; 30 cents per acre for the second year; 50 cents per acre for the third year; and \$1 per acre per annum for the fourth and each succeeding year during the life of any lease: *Provided*, That all such payments of advance rentals shall be credits on royalties on production during the year for which payment of advance rental is made.

(b) The payment of annual advance rental shall not release the lessee from the obligation to conduct mining operations, as required by the terms of the lease.

§ 214.10 Royalty rates.

Royalties will be required as follows, subject to the approval of the President, in accordance with the act of June 28, 1906 (34 Stat. 543):

(a) For gold, silver, or copper lessee shall pay quarterly a royalty of 10 percent to be computed on the gross value of the ores as shown by reduction returns after deducting freight and treatment charges. Duplicate reduction returns shall be filed by the lessee with the officer in charge within 20 days after the reduction of the ores.

(b) For coal the lessee shall pay a royalty of 10 cents per ton of 2,000 pounds on mine run or coal as taken from the mines, including what is commonly called "slack."

(c) For asphaltum and allied substances, the lessee shall pay quarterly a royalty of 10 cents per ton of 2,000 pounds on crude material, and 60 cents per ton on refined substances.

(d) For substances other than gold, silver, copper, lead, zinc, coal, and asphaltum the lessee shall pay quarterly a royalty of 10 percent of the value at the nearest shipping point of all ores, metals, or minerals marketed.

(e) The royalties to be paid for lead and zinc shall be computed for each mineral at the same rate that the amount of the concentrates of such mineral bears to the total amount of dirt or rock actually mined, except as stipulated in this section. The royalty so determined shall be increased by adding 1 percent for each increase of \$10 in the selling price per ton thereof over and above the following, which shall be the agreed base or standard:

For zinc—\$50
For lead—\$65

but in no case shall the rate of royalty be less than 5 percent or more than 20 percent. The percentage of recovery shall be computed as nearly as practicable upon the ore included in each sale, but where it is impracticable so to do the officer in charge and the lessee shall agree upon some other method of computation which will produce substantially the same result: *Provided*, That in case of their disagreement the Commissioner of Indian Affairs shall prescribe a rule of computation to be followed in such cases.

NOTE: The royalty would always be determined under this rule by ascertaining the percentage of recovery were it not for two things: (1) the flat rates which are fixed as the minimum and the maximum rates of royalty and (2) variations in the selling price of the ores. Concrete examples coming under the rule are set forth in the following table:

ZINC		
[Where the base or standard is \$50 per ton]		
Percentage of recovery	Selling price	Royalty (percent)
7	\$48	7
14	49	14
12	50	12
15	60	16
30	60	20
9	70	11

A similar table might be constructed for royalties on lead, but in so doing it would be necessary to bear in mind that the base or standard selling price for the lead is to be \$65 instead of \$50.

§ 214.11 Payment of rents and royalties.

All rentals, royalties, damages, or other amounts which may become due under leases approved in accordance with the regulations in this part shall be paid to the disbursing agent at Pawhuska, Okla. The remittances shall be in St. Louis exchange, except that where such exchanges cannot be procured post office or express money orders will be accepted. All royalties or other payments or claims of the Osage Tribe arising under such leases shall be a lien upon the mining plant machinery, and all minerals mined on the property leased or in which the lessee still retains any right, claim, or interest.

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§ 214.12 Time of payment of royalties.

Royalties on all minerals produced in any quarter (January-March, April-June, July-September, October-December) shall be paid on or before the 25th day of the month next succeeding, and the remittance shall be accompanied by sworn reports covering all operations, whether there has been production or not. Annual advance rentals shall be paid within 10 days after the beginning of the lease year.

§ 214.13 Diligence; annual expenditures; mining records.

(a) Lessees shall exercise diligence in the conduct of prospecting and mining operations, and on all leases referred to in § 214.8(a) shall expend annually in development work a sum which with the annual rental shall make an amount of not less than \$5 per acre. On all leases referred to in § 214.8 (b) and (c) there shall be expended annually in development work a sum which inclusive of the annual rental shall make an amount of not less than \$1 for each acre or fraction thereof included in the lease. The lands covered by each lease referred to in § 214.8 (d) shall be prospected for lead and zinc ores by drilling within 1 year test holes aggregating 2,000 feet unless a sufficient ore body is discovered to justify the sinking of a shaft to the ore body and the erecting of a mill when such tract may be released from further prospecting by the written consent of the superintendent: *Provided*, That within 90 days after an ore body of sufficient quantity is discovered, and shown by the logs or records of the drill holes, to justify the expenditure, the sinking of a shaft to the ore body, and the erection of a mill shall be commenced and continued to completion without cessation of work thereon, barring unavoidable accidents or causes beyond the control of the lessee.

(b) Lessee shall keep upon the leased premises accurate records of the drilling, re-drilling, or deepening of all holes showing the formations, and upon the completion of such holes, copies of such records shall be transmitted to the superintendent by the lessee after the first completion and of any further drilling thereafter, and a failure to so furnish report within the time pre-

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scribed shall be considered a violation of the regulations. Lessee shall, before commencing operations, file with the superintendent a plat and preliminary statement of how the openings are to be made and the property developed.

§ 214.14 Use of surface lands.

(a) Lessees may use so much of the surface of the leased land as shall be reasonably necessary for the prospecting and mining operations and buildings required by the lease, and shall also have the right-of-way over and across such land to any point of prospecting or mining operations, but such use of the surface shall be permissible only under condition of least injury and inconvenience to the allottee or owner of the land. Lessees before commencing and during such operations shall pay all reasonable damages for the use of the surface land and to any growing crops thereon, or to improvements on said land, or any damage that during the life of the lease may be occasioned in any manner whatsoever by the use of the surface, to the allottee or his successor in interest or assignee, or to a lessee of the surface of said land or to an oil and gas lessee, damages to be apportioned among the parties interested in the surface, whether as owner, lessee, or otherwise, as the parties in interest may mutually agree or as their interests may appear. If the parties are unable to agree concerning damages the same shall be determined by arbitration.

(b) All agreements (or authenticated copies thereof) providing for the settlement of damages shall be filed in the Osage Agency if the surface owner is a restricted Indian, and all such amounts which may be due and payable to any such Indian shall be paid to the superintendent and by him immediately remitted to the Indian entitled thereto. All sums due as royalty or damages shall be a lien on all equipment on leased premises.

§ 214.15 Homesteads.

Lessees and those acting under them shall not conduct prospecting or mining operations within or upon any homestead selection without written

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consent of the Secretary of the Interior.

§ 214.16 Settlement of damages.

Any person, other than a lessee or an allottee or the heirs of a deceased allottee, claiming an interest in any leased tract or in damages thereto must furnish to the officer in charge a statement in writing showing his interest, and failure to furnish such statement shall constitute a waiver of notice and estop said person from claiming any part of such damages after the same shall have been disbursed.

§ 214.17 Use of timber from restricted lands.

Lessees will not be permitted to use any timber from any Osage lands not relieved of restrictions upon alienation except under written agreement with the owner approved by the officer in charge.

§ 214.18 Assignments.

Approved leases or any interest therein may be transferred or assigned with the consent and approval of the Secretary of the Interior and not otherwise. Transfers or assignments, when so approved, shall be subject to the terms and conditions of the original leases and regulations under which such leases were approved as well as to such additional requirements as the Secretary of the Interior may prescribe. The transferee or assignee shall furnish with his transfer or assignment a satisfactory bond as prescribed in § 214.4 in connection with leases. Any attempt to transfer or assign an approved lease or any interest therein without the consent and approval of the Secretary of the Interior shall be absolutely void and shall subject the original lease to cancellation in the discretion of the secretary.

§ 214.19 Cancellation.

When a lessee makes application for the cancellation of a lease in whole or in part, all royalties or rentals due up to and including the date of the application for cancellation must be paid, and that part of the lease delivered to the lessee shall be surrendered before such application will be considered. In the event a lease is surrendered for

cancellation in whole or in part, after a new lease year has been entered upon, the lessee and his surety shall be liable for the advance rentals required to be paid under the lease for that year, and no part of such rentals which may have been paid shall be refunded.

§ 214.20 Annual reports by corporate lessees.

Lessees and assignees must submit to the officer in charge on January 1, of each year and at such other times as may be required by the Secretary of the Interior, a statement containing the information called for in § 214.3(a) and (f) and also showing any changes in officers or changes in or additions to stockholders. At any time individual stockholders may be required to show to the satisfaction of the Secretary of the Interior in what companies or with what persons or firms they are interested in mining leases on the Osage Reservation and whether they hold such stock or interest for themselves or in trust.

§ 214.21 Inspection of lessees' books and records.

Lessees shall allow the agents and representatives of the lessor, or any authorized representative of the Interior Department, to enter, from time to time, upon and into all parts of the leased premises for the purpose of inspection, and their books and records showing manner of operations and persons interested, shall be open at all times for the examination of such officers of the department as shall be instructed by the Secretary of the Interior to make such examinations.

§ 214.22 Serving of notices.

Wherever notice is provided for in this part it shall be sufficient if notice has been mailed to the last known place of address of the party, and time shall begin to run with the day next ensuing after the mailing or from the date of delivery of personal notice; but where the party is outside the State of Oklahoma the officer in charge may, in his discretion, increase the time allowed.

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§ 214.23 Plat of mine location.

Lessees are required, when so requested, to file a plat of their leases showing exact locations of all mines, proposed locations, power houses, etc.

§ 214.24 Forms.

Applications, leases, and other papers must be upon forms prepared by the department, and the superintendent of the Osage Indian school, Pawhuska, Okla., will furnish prospective lessees with such forms at a cost of \$1 per set.

Form M. Application for mining lease, including financial showing.

Form N. Lease (except lead and zinc).

Form O. Bond.

Form P. Authority of officers to execute papers.

Form Q. Assignment.

Form R. Lease for lead and zinc.

Form S. Collective bond.

§ 214.25 Forfeiture of lease.

On the failure of any lessee or assignee to comply with any regulation or any obligation in the lease or assignment, the Secretary of the Interior may cancel and annul such lease without resorting to the courts and without any further proceeding: *Provided*, That the party or parties charged with such violation shall be first given not less than 30 days' notice to show cause why such lease should not be canceled and annulled or other order made with reference thereto.

§ 214.26 Fine; notice and hearing.

Violation of any of the terms or conditions of any lease or of the regulations pertaining thereto shall subject the lease to cancellation by the Secretary of the Interior, or the lessee to a fine of not exceeding \$500 per day for each and every day the terms of the lease or of the regulations are violated, or the orders of the superintendent in reference thereto are not complied with, or to both such fine and cancellation in the discretion of the Secretary of the Interior: *Provided*, That the lessee shall be entitled to notice and hearing with respect to the terms of the lease or of the regulations violated, which hearing shall be held by the superintendent, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30

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days after notice of the superintendent's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

§ 214.27 Changes in regulations.

The regulations in this part are subject to change or alteration at any time by the Secretary of the Interior.

§ 214.28 Location of sites for mines and buildings.

In event of disagreement between two or more mineral lessees regarding sites for the location of wells, mines, buildings, plants, etc., the same shall be determined by the superintendent after investigation and after due consideration of prior right of any lessee by reason of date of approval of lease.

§ 214.29 Prospecting; abandonment of mines.

All prospecting or mining operations or the abandonment of a well or mine shall be subject to the approval of the superintendent, and any disagreement between lessees of mineral leases regarding operations likely to result in injury to either lessee shall be determined by the superintendent, whose decision shall be final, unless an appeal is filed with the Secretary of the Interior within 30 days after notice of such decision.

§ 214.30 Lessees must appoint local representative.

Before actual drilling or development operations are commenced on leased lands, the lessee or assignee shall appoint a local or resident representative within the State, on whom the superintendent or other authorized representative of the department may serve notice or otherwise communicate with in securing compliance with the regulations in this part and shall notify the superintendent of the name and post office address of the representative so appointed.

PART 215—LEAD AND ZINC MINING OPERATIONS AND LEASES, QUAPAW AGENCY

Sec.

215.0 Definitions.

215.1 No operations until lease approved.